

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1251 of 1998

in

SPECIAL CIVIL APPLICATION No 6893 of 1998

with

Letters Patent Appeal No.1251 of 1998

with

Civil Applications Nos.9752/98 & 9760/98

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 2 : Yes
3 to 5 : No

SPACE APPLICATION CENTRE (ISRO)

Versus

JANAKKUMAR S DATANIA

Appearance:

MR JAYANT PATEL for Appellant

Mr.C.B. Dastoor for the respondents

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and

MR.JUSTICE M.H.KADRI

Date of decision: 12/10/98

COMMON ORAL JUDGEMENT (Per: K.G. Balakrishnan,C.J.)

1. Admit. Service of notice of admission is waived by learned advocate Mr. C.B. Dastoor for the respondents.

2. The respondents in both the appeals are the petitioners who have filed two Special Civil Applications contending that they had already been selected for appointment as Canteen Attendants and they were awaiting appointment. The appellant has taken steps to appoint other candidates who were sponsored by the Employment Exchange. The learned single Judge directed that the proposed interview shall not be held till October 28, 1998 and the Special Civil Applications were disposed of with the directions that the petitioners therein may approach the Central Administrative Tribunal which shall have jurisdiction to entertain the applications. This order dated October 8, 1998 of the learned single Judge is challenged before us.

3. We heard learned advocate Mr. Jayant Patel for the appellant and learned advocate Mr.C.B. Dastoor for the respondents.

4. The learned counsel for the appellant contended that both the Special Civil Applications were not maintainable, and, when the Special Civil Applications themselves were not maintainable, the learned single Judge ought not to have passed any order directing the appellant to postpone the interview. The learned counsel for the appellant relied upon the decision of the Supreme Court in the case of State of Orissa v. Madan Gopal, reported in A.I.R. (39) 1952 Supreme Court 12, wherein, it was held that, "Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application. If the Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order

for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not for the purpose of facilitating the institution of such suit, issue direction in the nature of temporary injunction under Art. 226 of the Constitution. The language of Art.226 does not permit such an action." In the instant case, the respondents filed Special Civil Applications contending that the procedure for appointment to the post of Canteen Attendants initiated by the appellant was illegal in the sense that the respondents herein have superior claim as they were included in the select list. Section 14 of the Administrative Tribunals Act, 1985 ('Act' for short) provides that the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day all courts (except the Supreme Court) in relation to recruitment, and matters concerning recruitment to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian. The question of jurisdiction of the Central Administrative Tribunal came up for consideration before the Supreme Court in the case of S.P. Sampath Kumar vs. Union of India (1987) 1 SCC 12, wherein, it was held that the Central Administrative Tribunal alone has got jurisdiction to entertain matters enumerated in Section 14 of the Act. It was specifically held that the High Court cannot exercise jurisdiction under Article 226 in the matters covered by Section 14 of the Act. Subsequently, the Supreme Court in the case of L. Chandra Kumar vs. Union of India, reported in AIR 1997 Supreme Court 1125, partly overruled the law laid down in the case of S.P.Sampath Kumar (supra), and, held, in paragraph 93, as under:

"93. Before moving on to other aspects, we may summarise our conclusions of the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and

rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Court. We may add that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal."

(Emphasis supplied)

From the above paragraph, it is clear that it will not be open for the litigants to directly approach the High Court at first instance in respect of the areas of law for which the Tribunals have been constituted. Therefore, it is clear that the matters covered by Section 14 of the Act cannot be entertained by the High Court and the petitions are liable to be rejected. The limited power exercised by the High Court under Article 226 is by way of judicial review of order, if any, passed by the Tribunal.

5. The learned counsel for the respondents contended, by relying on the judgment of the Supreme Court in the case of Union of India and others vs. R.Reddappa and another, reported in 1993 (4) SCC p.269, that the High Court can exercise power under Article 226 of the Constitution of India when alternative remedy is either not efficacious or cumbersome or dilatory. In the instant case, it is not the case of alternative remedy, but the High Court under Article 226 entertained the applications on the subject matters covered by Section 14 of the Act. Therefore, the learned single Judge was not justified in entertaining the applications. The Central Administrative Tribunal alone could have been approached by the respondents. When the Special Civil Applications were not maintainable, the learned single Judge could not have passed any direction. Therefore, the direction that there shall not be interview for selection of Canteen

Attendants till 28.10.1998, is vacated. It is made clear that we are not expressing anything on merit regarding recruitment and selection, and the respondents are at liberty to approach the Central Administrative Tribunal.

6. In the result, these appeals are allowed. Civil Applications are disposed of accordingly. There shall be no order as to costs.

(swamy)